IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D 1899.

No. 168.

FRANK X. WERLING and EUGENE SMITH, *Plaintiffs in Error,* vs. EMILY E. INGERSOLL and GEORGE INGERSOLL, *Defendants in Error.*	In error to the Supreme Court of Illinois.

MOTION BY DEFENDANTS IN ERROR TO DISMISS THE WRIT OF ERROR ISSUED IN THE ABOVE ENTITLED CAUSE TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

TO THE HONORABLE, THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

And now comes the said George Ingersoll and Emily E. Ingersoll, defendants in error, by William M. Springer, their attorney, and moves the court to dismiss the writ of error in the above entitled cause—

1st. Because it appears, from the affidavits in this

suit, that there is no existing actual controversy between said plaintiffs in error and the said defendants in error.

2nd. Because it appears, from the affidavits and exhibits on file in this suit, that the matters in controversy between the said plaintiffs in error and the said defendants in error have, since the trial of said cause in the Circuit Court of La Salle County and State of Illinois, been fully adjusted in the manner following. By reason of the grantee of defendants in error recognizing the right and title of the Canal Commissioners of the State of Illinois to the said lands and property in controversy in this cause; and because the said judgment of $50 rendered in favor of said defendants in error by the Circuit Court of La Salle County and State of Illinois, in said above entitled cause, has been satisfied by payment thereof to the clerk of the Circuit Court of La Salle County, Illinois.

3. Because it appears, from the affidavits and exhibits on file in this suit, that the writ of error herein is being prosecuted by the Canal Commissioners, in the name of the plaintiffs in error, for the purpose of procuring the opinion of this court upon a question of law, in which property to a very large amount is involved, and in which the canal commissioners have an interest opposed to that of other parties, who are not parties to the suit, who had no knowledge of it while it was pending in the Circuit Court of La Salle County and no opportunity of being heard there in defense of their rights.

GEORGE INGERSOLL and
EMILY E. INGERSOLL,
By WILLIAM M. SPRINGER,
Their Attorney.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1899.

No. 168.

Frank X. Werling and Eugene Smith,
Plaintiffs in Error,
v.
Emily E. Ingersoll and George Ingersoll,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Isham Randolph, being first duly sworn according to law, on his oath deposes and says: That he is of lawful age; that he is a civil engineer by profession, and now is and has been in the employ of the Sanitary District of Chicago for more than seven years last past as its chief engineer.

Affiant further on his oath states that he is familiar with the route and direction of the Illinois and Michigan Canal; that said canal has its southern terminus at Peru, in the State of Illinois, and the artificial channel of said canal extends from the last-named point in a north-easterly direction to Bridgeport, in Cook County, in the State of Illinois, where it connects with the south fork of the south branch of the Chicago river; that said canal, as originally laid out, extended from Peru, in said County of LaSalle, substantially on the line where the same has been constructed to said Bridgeport, and from that point to the mouth of the south branch of the Chicago river, in the City of Chicago,

which was embraced and included in the original plan of the construction of a canal to unite the waters of Lake Michigan with those of the Illinois river; that the length of the artificial channel of said canal is ninety-six miles, and that the length of the south branch of the Chicago river from the point of intersection of said canal with said Chicago river to the mouth of the Chicago river is about four and one-tenth miles; that between Peru and Bridgeport, in Cook County, the said canal passes through the following cities and villages: LaSalle, Utica, Ottawa, Marseilles, Seneca, Morris, Channahon, Joliet, Lockport, Lemont and Spring Forest; that the said City of LaSalle, as appears by the census of 1890, has a population of 9,855; Ottawa, 9,985; Morris, 3,653; Joliet, 23,624; Lockport, 2,449; Lemont, 6,000; that this affiant is unable to give the population of the villages of Utica, Marseilles, Seneca, Channahon and Spring Forest, and is also unable to state the population of all of the said villages and cities, as ascertained by the census of 1900, as the result of such census is not accessible to this affiant; that the said property along the said canal on the side opposite to the tow-path through the said Cities of La Salle, Ottawa, Morris, Joliet and Lemont, and the Villages of Utica, Marseilles, Seneca, Channahon, Lockport and Spring Forest, is used for business purposes of different kinds through said cities and villages, such as lumber yards, coal yards, breweries, grain elevators, and in the City of Joliet the west bank of the said canal, which through said city, from about the central part thereof is the tow-path side of the canal, is occupied by a large gas-works, business houses, stores and factories; that many of such buildings are either wholly

or partly within ninety feet of the canal, and occupy what is called the ninety-foot strip of said canal; that such buildings, factories, coal-yards and lumber yards have occupied said ninety-foot strip along said canal for a great many years, and the persons occupying the same claim to have purchased the land whereon said factories and other buildings are situated from the canal commissioners, or derive their title through the government of the United States; that all of the country between Peru and Bridgeport is settled, and the lands of great value; that the length of said canal through the City of La Salle is about one and one-half miles; through Ottawa, one and eight-tenths miles; Marseilles, one mile; Seneca, three-eighths of a mile; Morris, one mile; Channahon, three-fifths of a mile; Joliet, two and one-quarter miles; Lockport, one and three-quarter miles; Lemont, three-quarters of a mile; Spring Forest, one and one-quarter miles; that from Bridgeport, in Cook County, to the mouth of the south branch of the Chicago river, and within ninety feet on each side of said south branch of said Chicago river, the said banks of said river are used and occupied for the following business purposes: Coal docks, lumber yards, gas plants, grain elevators, slaughter houses, oil refineries, sugar refineries, stone yards, railway freight yards, electric lighting power plants, flour mills, manufactories, warehouses, and docks of transportation companies; that if it shall be held that the State of Illinois was not authorized to sell any lands within ninety feet of the said canal and along the line where the same was originally laid out, and that the Federal Government, by reason of the act of Congress of 1882, had parted with its title to all the lands through which said canal was laid out by the State of Illinois, that the results of such decision will seriously

affect property along the line of said canal from said City of Peru to the mouth of the South Branch of the Chicago River, worth a great many millions of dollars.

Affiant further on his oath states, that he is informed and verily believes that the said cause now pending in the Supreme Court of the United States, entitled Frank X. Werling and Eugene Smith, Plaintiffs in Error, *vs.* Emily E. Ingersoll and George Ingersoll, Defendants in Error, is prosecuted and carried on in said Supreme Court of the United States by the Canal Commissioners of the State of Illinois, in support of which belief this affiant quotes from page 9 of the report of the Canal Commissioners, made to the Governor of the State of Illinois, December 1, 1899:

"The case of Werling *vs.* Ingersoll has been decided "against us in the Supreme Court and we have taken "the case to the Supreme Court of the United States on "writ of error, where it is still pending. It is an action "of trespass brought against Werling, our foreman at "Ottawa, for removing a fence built by Ingersoll on "what we claim is the ninety-foot strip of the canal. "The Circuit Court and our Supreme Court held in effect "that the state did not take title to a ninety-foot strip "though even sections under the acts of Congress of 1822 "and 1827. On the other hand, a directly opposite de- "cision was made by Judge Allen of the United States "Circuit Court in the case of the City of Chicago *vs.* "Wheeler. The land in this suit is of small value, but "as the title to other land of considerable value now in "possession of the state, some of it under lease to various "parties, depends on the result of this suit, we deem it "our duty to take the case to the Supreme Court of

"the United States, in order to finally settle the rights of "the state."

Also on page 56 of said report affiant quotes the following:

"There yet remains a large number of Canal Trustees' "Subdivision to be examined and located in Cook, Will, "Grundy, La Salle and Winnebago Counties, and also a "careful examination should be made of all original canal "sections through which there are running streams for "fractional pieces similar to the one found in the south-"west quarter of 9, 33, 9.

"There also appears to be no doubt but that the state "has title to a large amount of river frontage in Chicago. "This interest has, however, been so long neglected that "it is diffcult to secure the necessary documentary evi-"dence. Much has been secured and much remains to "be secured."

Affiant herewith attaches to his said affidavit an official copy of said report, portions of which have been above quoted.

Affiant further, on his oath states, that the Sanitary District of Chicago has a large tract of land along and adjoining the east bank of the Illinois and Michigan Canal in the City of Joliet, which it is absolutely necessary for it to possess in order to take advantage of the water power created by the construction of its works at Joliet; that said water power, when developed, will have a large value, the same being capable of developing a power equivalent to 7,900 horse power, with a minimum flow of water in the channel of the said Sanitary District, but with the maximum flow provided by the laws under which it is created, a water power will be developed in Joliet, by reason of the construction of the works of the

said Sanitary District of Chicago, of the equivalent of 15,800 theoretical horse power; that if the said Sanitary District of Chicago is deprived of all the land by it owned and possessed within ninety feet of the east bank of the Illinois and Michigan Canal, in the said City of Joliet, all of the power so created by its said works in the said City of Joliet will be lost to it; that the said Sanitary District of Chicago had no knowledge of the commencement of the above entitled suit, and did not have an opportunity of protecting its interests in the said cause when the same was tried in the Circuit Court of La Salle County, Illinois; that this affiant is informed and verily believes that the record in this cause, in the manner in which the same has been made up, does not present to this court the actual condition of the titles to the property along the said Illinois and Michigan Canal within ninety feet of the same, and that a decision of this cause, as he is informed and believes, will tend to cast a cloud upon the titles to all of the property along the Illinois and Michigan Canal and the course over and through which the same is laid out, within ninety feet of said canal and its course.

ISHAM RANDOLPH.

Subscribed and sworn to before me this 24th day of January, A. D. 1901.

SEYMOUR JONES,

[NOTARIAL SEAL] *Notary Public.*

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1899.

No. 168.

Frank X. Werling and Eugene Smith, *Plaintiffs in Error*, v. Emily E. Ingersoll and George Ingersoll, *Defendants in Error.*	*In Error to the Supreme Court of the State of Illinois.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Robert Carr, being first duly sworn according to law, on his oath deposes and says: That he is of lawful age, and a resident of the County of LaSalle and State of Illinois; that he is a lawyer by profession, and has practiced law in said LaSalle County since 1892; that at the request of the attorneys for the defendants in error, and also at the request of the attorney for the Sanitary District of Chicago, he examined certain papers and records in connection with the above entitled cause; that such examination was first made by him Saturday, the 19th inst., and that he prosecuted his search and made further examination upon the 21st and 22nd days of January, A. D. 1901; that this affiant was requested to ascertain the present apparent ownership of the property described as the north ninety (90) feet of the south fraction south of the canal of the west half of the south-east quarter of the north-west quarter, and the west half of the north-west quarter of section ten (10), township thirty-three (33) north, range three (3) east of the third principal meridian, said ninety

(90) foot strip extending across said south fraction of the north-west quarter of section ten (10) aforesaid in a south-westerly direction, immediately south of the top angle of the tow-path of the Illinois and Michigan Canal, and parallel with the Illinois and Michigan Canal, said strip of ninety (90) feet being a part of the following described property: That part of the west half of the north-west quarter and that part of the west half of the south-east quarter of the north-west quarter of said section ten (10) which lies south of the right of way of the Illinois and Michigan Canal in the County of LaSalle and State of Illinois, a plat of said last above described property, and showing the said ninety (90) foot strip embraced in the first description, being hereto annexed and made part hereof, and marked as Exhibit A. with this affidavit.

Affiant further on his oath states, that upon examining the records of the recorder's office of the County of La Salle and State of Illinois, he there found a deed of record in the office of the said recorder, bearing date the 20th day of January, A. D. 1900, from Emily E. Ingersoll and George Ingersoll, to Lorenzo Leland, said deed conveying the said ninety (90) foot strip, being the property contained in the first description in this affidavit for the expressed consideration of five hundred dollars, a true copy of said deed being hereto annexed and marked as Exhibit B with this affidavit; that affiant went to the office of a corporation known as the Ottawa Development Association, of which said association the said Lorenzo Leland is trustee, for the purpose of holding in trust the property of the said Ottawa Development Association, to avoid difficulties which might otherwise exist in selling its property to individuals, the intent being to create the said Lorenzo Leland as trustee as aforesaid

with power under proper direction from the officers of said association to convey such parts of its property to future purchasers as might be deemed proper by the said corporation; that in the office of the said Ottawa Development Association the secretary of the said association, George M. Trimble, read to this affiant portions of a lease of date, as affiant now remembers, of December 5, 1899, from the Canal Commissioners to the Ottawa Development Association, which said lease demised and leased to the said Ottawa Development Association for the term of twenty years the property described in the said deed from the said Emily E. Ingersoll and George Ingersoll to the said Lorenzo Leland, and which is marked as Exhibit B, with this affidavit; that as this affiant verily believes, the property so demised and leased by the said Canal Commissioners to the said Ottawa Development Association was in said lease described as the north ninety (90) feet of the south fraction south of the canal of the west half of the south-east quarter of the north-west quarter, and the west half of the north-west quarter of section ten (10), township thirty-three (33) north, range three (3) east of the third principal meridian, said ninety (90) foot strip extending across said south fraction of the north-west quarter of section ten (10) aforesaid; that the rental reserved by said lease to the said Canal Commissioners was the sum of seventy-five dollars per year during the term of said lease, said rent being payable in advance, and affiant has been informed by Vincent J. Duncan, one of the directors of said Ottawa Development Association, that said rent has been fully paid to the said Canal Commissioners for and during the full term of said lease; that this affiant requested the said Secretary of the said Ottawa Development Association to give a copy of said lease; that the said secretary referred this

affiant to one Vincent J. Duncan, a director and chairman of the law committee of said association; that the said Duncan, after repeated requests for permission to obtain a copy of said lease, refused to direct the said secretary to give this affiant a copy of said lease, so that affiant is unable to attach to this his affidavit a copy of the lease aforesaid, but that affiant verily believes that the description as to the property described in said lease, the term of the lease and the amount of rent reserved is accurately stated in this affidavit.

ROBERT CARR.

Subscribed and sworn to before me this 23rd day of January, A. D. 1901.

WILLIAM H. BEEBE,

[SEAL] *Notary Public.*

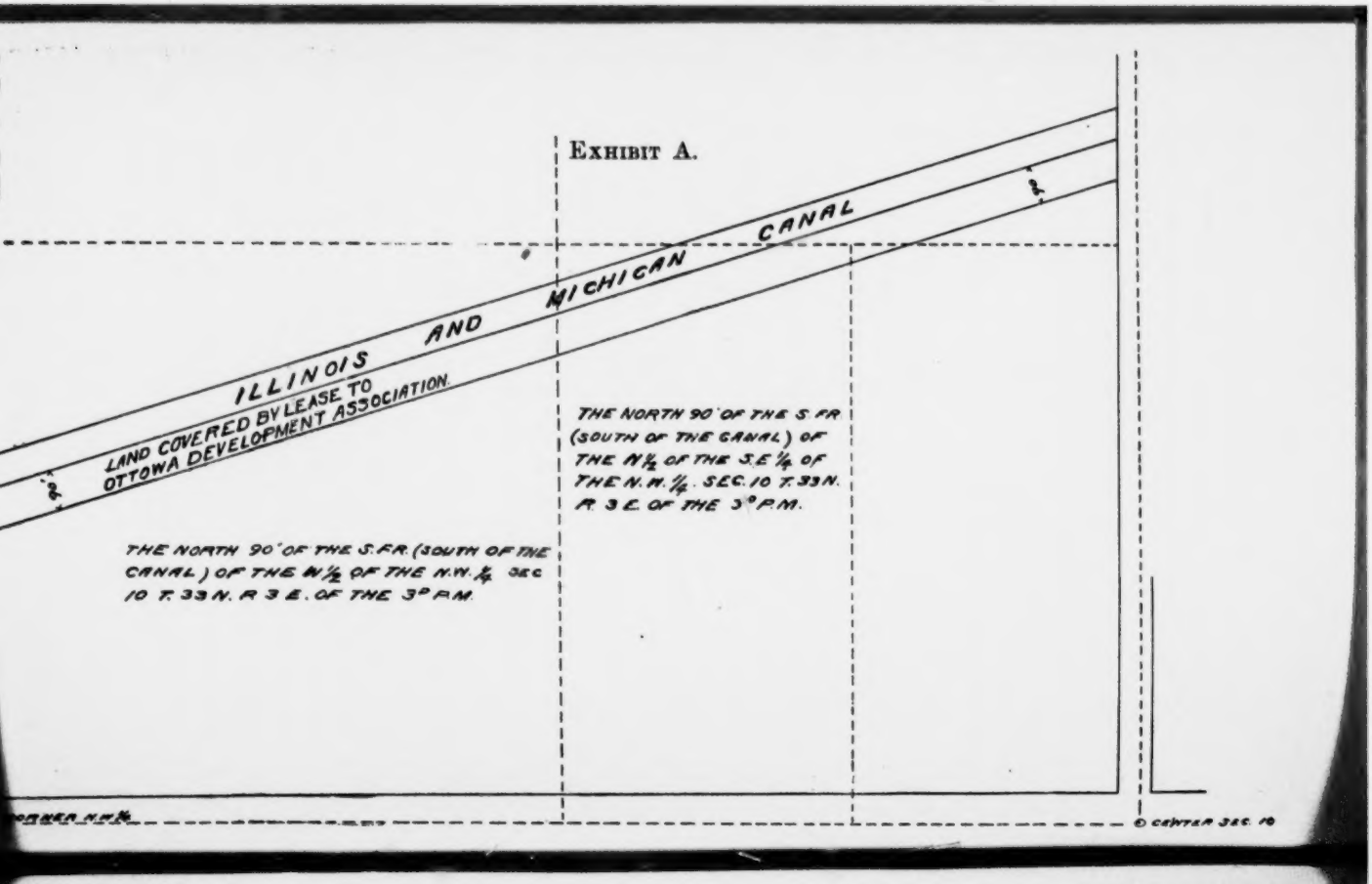
EXHIBIT A.
ILLINOIS AND MICHIGAN CANAL
LAND COVERED BY LEASE TO OTTOWA DEVELOPMENT ASSOCIATION.
THE NORTH 90' OF THE S.F.R. (SOUTH OF THE CANAL) OF THE N½ OF THE S.E¼ OF THE N.W.¼. SEC. 10 T. 33 N. R. 3 E. OF THE 3° P.M.
THE NORTH 90' OF THE S.F.R. (SOUTH OF THE CANAL) OF THE N½ OF THE N.W.¼ SEC 10 T. 33 N. R 3 E. OF THE 3° P.M.
CENTER SEC. 10

EXHIBIT "B."

This Indenture Witnesseth, that the grantors, Emily E. Ingersoll and George Ingersoll, her husband, of the Town of Ottawa, in the County of La Salle and State of Illinois, for and in consideration of the sum of five hundred ($500) dollars in hand paid, convey and warrant to Lorenzo Leland of the City of Ottawa, County of La Salle and State of Illinois, the following described real estate, to-wit:

The north ninety feet of the south fraction (south of the canal) of the west half of the south-east quarter (S. E. ¼) of the north-west quarter (N. W. ¼) and the west half (W. ½) of the north-west quarter (N. W. ¼) of section ten (10), township thirty-three (33) north, range three (3) east of the third principal meridian, said ninety-foot strip extending across said south fraction of the north-west quarter (N. W. ¼) of section ten (10) aforesaid, in a south-westerly direction, immediately south of the top angle of the tow-path, of and parallel with the Illinois and Michigan Canal.

Also a strip or parcel of land in the said south fractional north-west quarter (N. W. ¼) of section ten (10) aforesaid: Commencing at a point 397 feet north of the south-west (S. W.) corner of the north-west quarter (N. W. ¼) of section ten (10), and running thence north along the section line to the top angle of the tow-path or south bank of the Illinois and Michigan canal; thence north 70° 45′ east along said top angle of said bank to the east line of the west half (W. ½) of the south-east quarter (S. E. ¼) of the north-west quarter (N. W. ¼) of section ten (10), aforesaid; thence south to a point ninety (90) feet distant perpendicularly from said top angle; thence south

71° 45′ west to a point 260 feet east of the west line of said section ten (10); thence south-westerly along a curved lined having a radius of 360 feet to the place of beginning.

This conveyance is made subject to any claim or claims which the Illinois and Michigan Canal may have or make to said ninety-foot strip first above described, situated in the Town of Ottawa, in the County of LaSalle, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this 20th day of January, A. D. 1900.

(Signed) EMILY E. INGERSOLL. [SEAL]
GEORGE INGERSOLL. [SEAL]

U. S. Revenue Stamp ($.50).

STATE OF ILLINOIS, }
LASALLE COUNTY. } ss.

I, V. B. Weeks, a police magistrate and justice of the peace, in and for said county, in the state aforesaid, do hereby certify that Emily E. Ingersoll and George Ingersoll, her husband, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and seal this 20th day of January, A. D. 1900.

V. B. WEEKS, [SEAL]
Police Magistrate and Justice of the Peace.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1899.

No. 168.

Frank X. Werling and Eugene Smith,
Plaintiffs in Error,
vs.
Emily E. Ingersol and George Ingersoll,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Robert Carr, being first duly sworn according to law, on his oath deposes and says: That he is of lawful age, and that upon the 25th day of January, A. D. 1901, he paid into and deposited with the Clerk of the Circuit Court of the County of La Salle, and State of Illinois, the full amount of the judgment, interest and costs awarded and adjudged to plaintiff by the judgment and consideration of the said Circuit Court of La Salle County in the case therein entitled Emily E. Ingersoll and George Ingersoll *vs.* Frank X. Werling and Eugene Smith.

ROBERT CARR.

Subscribed and sworn to before me this 25th day of January, A. D. 1901.

WILLIAM H. BEEBE,
Notary Public.

[NOTARIAL SEAL]

JAN 29 1901
JAMES H. McKENNEY
Clerk.

Filed Jan. 29, 1901.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D 1899 1900.

No. 168.

FRANK X. WERLING and EUGENE SMITH,
Plaintiffs in Error,
vs.
EMILY E. INGERSOLL and GEORGE INGERSOLL,
Defendants in Error.

In error to the Supreme Court of Illinois.

STATEMENT OF FACTS AND BRIEF OF AUTHORITIES ON MOTION TO DISMISS WRIT OF ERROR.

WILLIAM M. SPRINGER,
ATTORNEY FOR DEFENDANTS IN ERROR

The Courtney-Warren Printing Company, 63 Dearborn St., Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1899.

No. 168.

FRANK X. WERLING and EUGENE SMITH, *Plaintiffs in Error,* vs. EMILY E. INGERSOLL and GEORGE INGERSOLL, *Defendants in Error.*	In error to the Supreme Court of Illinois.

STATEMENT OF FACTS AND MEMORANDUM OF AUTHORITIES ON MOTION TO DISMISS WRIT OF ERROR.

This suit is an action of trespass instituted in the Circuit Court of La Salle County by Emily Ingersoll and George Ingersoll, defendants in error, against Frank X. Werling and Eugene Smith, plaintiffs in error, to recover damages for removing the fences and entering the close of defendants in error.

Since the commencement of this suit and on the 20th day of January, A. D. 1900, the defendants in error

Emily Ingersoll and George Ingersoll, defendants in error herein, conveyed to one Lorenzo Leland, trustee under a deed of trust to said Lorenzo Leland from the Ottawa Development Association, the land in controversy in this case, as appears from the affidavit of Robert Carr and Exhibit "A" attached thereto, filed herein. On December 5, 1899, the Ottawa Development Association leased from the Canal Commissioners the land in controversy for a term of twenty years, from said 5th day of December, 1899, at an annual rental of $75 per annum. The state has thus succeeded in having its title to the land in controversy in this case acknowledged by the grantee of the defendants in error in this case.

It thus appears that the Canal Commissioners of the State of Illinois have obtained all they ~~profess in their report to the governor of Illinois to~~ could recover in this case by judgment of this court in their favor. This court is called upon to decide in this case the following question, viz: Is the State of Illinois the owner of a strip of land ninety feet in width along and contiguous to the Illinois and Michigan Canal on each side thereof? In the determination of this question many millions of dollars of property will be thereby affected. As appears from the affidavit of Isham Randolph on file herein, the Illinois and Michigan Canal, as originally laid out, extended from Peru, in said County of La Salle, substantially on the line where the same has been constructed to Bridgeport, in the County of Cook, and from that point to the mouth of the south branch of the Chicago river, in the City of Chicago, which was embraced and included in the original plan of the construction of the canal to unite the waters of Lake Michigan with those of the Illinois river;

the length of the artificial channel of said canal is ninety-six miles, and the length of the south branch of the Chicago river, from the point of intersection of said canal to the mouth of the Chicago river, is about 4.1 miles. Between Peru and Bridgeport, in Cook County, the said canal passes through the following cities and villages: La Salle, Utica, Ottawa, Marseilles, Seneca, Morris, Channahon, Joliet, Lockport, Lemont and Spring Forest. The said City of La Salle, as appears by the census of 1890, has a population of 9,855; Ottawa, 9,985; Morris, 3,653; Joliet, 23,624; Lockport, 2,449; Lemont, 6,000. The said property along the said canal on the side opposite to the tow-path, through the said cities of La Salle, Ottawa, Morris, Joliet and Lemont, and the villages of Utica, Marseilles, Seneca, Channahon, Lockport and Spring Forest, is used for business purposes of different kinds through said cities aud villages, such as lumber yards, coal yards, breweries, grain elevators, and, in the City of Joliet, the west bank of said canal through which said city, from about the central part thereof, is the tow-path side of the canal, is occupied by a large gas-works, business houses, stores and factories. Many of such buildings are either wholly or partly within ninety feet of the canal, and occupy what is called the ninety-foot strip of said canal, and have occupied said ninety-foot strip along said canal for a great many years; and the persons occupyig the same claim to have purchased the land whereon said factories and other buildings are situated from the Canal Commissioners or derived their title through the government of the United States. All of the country between Peru and Bridgeport is settled and the lands are of great value. The length of said canal through the City of La Salle is about one and one-half

miles; through Ottawa, one and eight-tenths miles; Marseilles, one mile; Seneca three-eighths of a mile; Morris, one mile; Channahon, three-fifths of a mile; Joliet, two and one-quarter miles; Lockport, one and three-quarters miles; Lemont, three-quarters of a mile; Spring Forest, one and one-quarter miles. From Bridgeport, in Cook County, to the mouth of the south branch of the Chicago river, and within ninety feet on each side of said south branch of said Chicago river, the said banks of said river are used and occupied for the following business purposes: Coak docks, lumber yards, gas plants, grain elevators, slaughter houses oil refineries, sugar refineries, stone yards, railway freight yards, electric light power plants, flour mills, manufactories, warehouses, and docks of transportation companies.

If it shall be held that the State of Illinois was not authorized to sell any lands within ninety feet of said canal, and along the line where the same was originally laid out, and that the Federal Government by reason of the Act of Congress of 1822 had parted with its title to all the lands through which said canal was laid out by the State of Illinois, all property along the line of the canal from the city of Peru to the mouth of the south branch of the Chicago river would be seriously affected thereby.

From the affidavit of Isham Randolph filed herein it appears that the record in this case in the manner in which the same has been ma de up does not present to this court the actual condition of the titles to the property along the Illinois and Michigal Canal within ninety feet of the same.

The defendants in error in the above entitled cause now present to this court by their attorney a motion to dismiss the writ of error, based upon three grounds: 1st,

because there is no real and substantial controversy between the parties herein: 2nd, because the matters in controversy between the plaintiffs and defendants have since the trial of said suit been fully adjusted, and the plaintiffs in error restored to all the rights claimed by them in said suit; 3rd, because said suit is being prosecuted by the Canal Commissioners in the name of the plaintiffs in error, for the purpose of procuring the opinion of this court upon a question of law, in which the Canal Commissioners have an interest opposed to that of other parties, who are not parties to this suit, who had no knowledge of it while it was pending in the Circuit Court of La Salle County, and who had no opportunity of being heard there in defense of their rights.

ANY ATTEMPT, BY A MERE COLORABLE DISPUTE, TO OBTAIN THE OPINION OF THE COURT UPON A QUESTION OF LAW WHICH A PARTY DESIRES TO KNOW FOR HIS OWN INTEREST OR HIS OWN PURPOSES, WHEN THERE IS NO REAL AND SUBSTANTIAL CONTROVERSY BETWEEN THOSE WHO APPEAR AS ADVERSE PARTIES TO THE SUIT AND WHERE THE RIGHTS OF OTHER PARTIES NOT PARTIES TO THE SUIT WILL BE AFFECTED, IS AN ABUSE WHICH COURTS OF JUSTICE HAVE ALWAYS REPREHENDED, AND TREATED AS A PUNISHABLE CONTEMPT OF COURT.

Lord v. *Veazie*, 8 How., 251–255.
Cleveland v. *Chamberlain*, 1 Black, 419.
Wood Paper Co. v. *Heft*, 8 Wall., 339.
San Mateo County v. *S. Pac. R. R. Co.*, 116 U. S., 138.
Little v. *Bowers*, 134 U. S. 547.
Singer Mfg. Co. v. *Wright*, 141 U. S., 696.
Elgin v. *Marshall*, 106 U. S., 578.

California v. *Railroad Co.*, 149 U. S., 308.

Mills v. *Green*, 159 U. S., 651.

In the case of *Lord* v. *Veazie*, 8 How., 251, a writ of error was prosecuted from the United States Circuit Court for the District of Maine. An affidavit was filed by Mr. Moore on behalf of third persons not parties to the suit, setting up that there was no real dispute between plaintiff and defendant, and that the interest of the plaintiff and the defendant was one and the same, and adverse to the interest of other persons not before the court. The court on motion dismissed the writ of error and said on page 254:

"The court is satisfied, upon examining the record in "this case, and the affidavits filed in the motion to dis- "miss, that the contract set out in the pleadings was "made for the purpose of instituting this suit, and that "there is no real dispute between the plaintiff and de- "fendant. On the contrary, it is evident that their in- "terest in the question brought here for decision is one "and the same, and not adverse, and that in these pro- "ceedings the plaintiff and defendant are attempting to "procure the opinion of this court upon a question of "law, in the decision of which they have a common in- "terest opposed to that of other persons, who are not "parties to this suit, who had no knowledge of it while "it was pending in the Circuit Court, and no opportun- "ity of being heard there in defense of their rights. And "their conduct is the more objectionable, because they "have brought up the question upon a statement of facts "agreed on between themselves, without the knowledge "of the parties with whom they were in truth in dis- "pute, and upon a judgment *pro forma* entered by their

"mutual consent, without any actual judicial decision by "the court. It is a question, too, in which it appears "that property to a very large amount is involved, the "right to which depends on its decision."

And on page 255, further says:

"It is the office of courts of justice to decide the "rights of persons and of property, when the persons "interested cannot adjust them by agreement between "themselves, and to do this upon the full hearing of both "parties. And any attempt, by a mere colorable dis- "pute, to obtain the opinion of the court upon a ques- "tion of law which a party desires to know for his own "interest or his own purposes, when there is no real and "substantial controversy between those who appear as ad- "verse parties to this suit, is an abuse which courts of "justice have always reprehended and treated as a pun- "ishable contempt of court."

In *Wood Paper Co.* v. *Heft*, 8 Wal., 333, a bill was filed to restrain the infringement of a certain patent, the bill was dismissed, and was subsequently appealed to the United States Supreme Court. Pending the appeal, one Meach asked leave to intervene, alleging that since the decree the case has been settled and was now carried on without the appellees having any further interest in the defense for the purpose of obtaining the decree of the United States Court in favor of the complainants, which would affect the rights of others not before the court. The appeal was dismissed upon the authority of the case of *Lord* v. *Veazie*, 8 How., 255.

In the case of *Little* v. *Bowers*, 134 U. S., 547, a suit was commenced for the purpose of litigating the validity of certain taxes assessed by the City of Elizabeth, New Jersey. After the case had been submitted to the court

upon argument, a motion was filed to dismiss the suit, upon the ground that the taxes had been paid, and that the suit was being prosecuted for the sole purpose of obtaining the opinion of the court as to the validity of an alleged contract, on the subject of taxation between the State of New Jersey and the company. The motion was granted; the court saying, on page 557:

"It is well settled that when there is no actual controversy involving real and substantial rights, between "the parties to the record, the case will be dismissed. "In *Lord* v. *Veazie*, 8 How., 251, a writ of error was "dismissed by this court where it appeared from affidavits and other evidences, by persons *not parties to the* "*suit*, that there was no real controversy between the "plaintiff and defendant, that the suit was instituted to "procure the opinion of this court on a question of law, "in the decision of which they had a common interest "opposed to that of other persons who were not parties "to the suit and had no knowledge of its pendency in the "Circuit Court."

In the case of *California* v. *Railroad Co.*, 149 U. S., 308, this court said (page 314):

"And the state has obtained everything that it could "recover in this case by a judgment of this court in its "favor. The duty of this court, as of every judicial "tribunal, is limited to determining rights of persons or "of property which are actually controverted in the "particular case before it. When, in determining such "rights, it becomes necessary to give an opinion upon a "question of law, that opinion may have weight as a "precedent for future decisions. But the court is not "empowered to decide moot questions or abstract propo-"sitions, or to declare, for the government of future

"cases, principles or rules of law which cannot affect the "result as to the thing in issue in the case before it. No "stipulation of parties or counsel, whether in the case "before the court or in any other case, can enlarge the "power, or affect the duty of the court in this regard."

In the case of *Mills* v. *Green*, 159 U. S., 651, the court said on page 654:

"For example, appeals have been dismissed by this "court when the plaintiff had executed a release of his "right to appeal; *Elwell* v. *Fosdick*, 134 U. S., 500; *or* "*when the rights of both parties had come under the con-* "*trol of the same persons; Lord* v. *Veazie*, 8 How., 251; "*Cleveland* v. *Chamberlain*, 1 Black, 419; *Wood Paper* "*Co.* v. *Heft*, 8 Wall., 333; *East Tennessee Railroad* v. "*Southern Telegraph Co.*, 125 U. S., 695; *South Spring* "*Co.* v. *Amador Co.*, 145 U. S., 300; or when the mat- "ter has been compromised and settled between the par- "ties; *Dakota County* v. *Glidden*, 113 U. S., 222; or "when, pending a suit concerning the validity of the "assessment of a tax, the tax was paid; *San Mateo* "*County* v. *Southern Pacific Railroad*, 116 U. S., 138; "*Little* v. *Bowers*, 134 U. S., 547; *Singer Co.* v. *Wright*, "141 U. S., 696; or the amount of the tax was tendered "and deposited in a bank, which by statute had the same "effect as actual payment and receipt of the money. "*California* v. *San Pablo & Tulare Railroad*, 149 U. "S., 308."

Respectfully submitted.

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